

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In re: ARC AIRBAGS INFLATORS
PRODUCTS LIABILITY LITIGATION

ALL CASES

Case No.: 1:22-md-03051-ELR

MDL No. 3051

Judge: Eleanor L. Ross

**JOINT SUBMISSION OF
DEADLINES FOR RULE 26(F)
CONFERENCE, INITIAL
DISCLOSURES, AND OTHER
PRELIMINARY DISCOVERY**

Pursuant to Section 1 of this Court’s March 2, 2023 Case Management Order [ECF 51], all Plaintiffs and appearing Defendants (together, the “Parties”) hereby jointly submit the following proposed deadlines¹:

¹The appearing Defendants take the position that the proposed discovery deadlines below apply only to those Parties that do not have jurisdictional defenses. This is consistent with appearing Defendants’ prior representations that it is improper to compel them to participate in discovery at this time with the potential exception of jurisdictional discovery that may be necessary—all as permitted by this Court. (*See* ECF 29, at 6.) All other Parties agree to participate in the preliminary discovery as outlined by their respective positions below.

Event	Plaintiffs' Proposed Deadlines	Defendants' Proposed Deadlines
1. Initial Disclosures	Fourteen (14) days after filing of Consolidated Complaint(s)	Agree
2. Rule 26(f) Conference	April 11, 2023, in advance of the Joint Statement containing a master schedule or competing schedules	Thirty (30) days after filing of Consolidated Complaint(s)
3. Deadline for production of agreed upon other preliminary discovery. The Parties agree that participating Defendants shall produce Information Request responses and attachments in National Highway Traffic Safety Administration ("NHTSA") investigation (EA16-003) that were previously produced to NHTSA and that may be relevant to the claims and defenses in this case ("Agreed Upon Materials"). Plaintiffs seek additional preliminary discovery, noted to the right and below.	<p>April 14, 2023 for Defendants to produce Agreed Upon Materials.</p> <p>April 28, 2023 for Defendants to produce documents that they already collected, reviewed, and produced to NHTSA.</p> <p>April 28, 2023 for the parties to exchange information about corporate structure as it relates to the conduct and products at issue in this litigation.</p>	Thirty (30) days after filing of Consolidated Complaint(s) to produce Agreed Upon Materials

Event	Plaintiffs' Proposed Deadlines	Defendants' Proposed Deadlines
4. Deadline for any Defendant(s) to disclose intent to raise jurisdictional defenses and the general nature of those defenses	Fourteen (14) days, after filing of Consolidated Complaint(s), after which Plaintiffs may serve jurisdictional discovery requests.	Sixty (60) days after Consolidated Complaint(s) filed, per ECF No. 51, p. 1.

Parties' Positions on Disputed Items

1. Initial Disclosures

No dispute.

2. Rule 26(f) Conference

Plaintiffs' Position:

Plaintiffs' proposal is based on two grounds: (1) Rule 26, which provides, "Except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B) or when the court orders otherwise, the parties must confer as soon as practicable—and in any event at least 21 days before a scheduling conference is to be held or a scheduling order is due under Rule 16(b)."; and (2) April 14, 2023 is the deadline for the Parties to file the Joint Statement containing master schedule (or competing schedules) for discovery, class certification, summary judgment, and other motions. *See* Case Management Order (ECF No. 51). The Court should order the Parties to have a Rule 26(f) conference before or concurrently with the scheduling conference.

Indeed, Rule 16(b) provides “the district judge . . . must issue a scheduling order: (A) after receiving the parties’ report under Rule 26(f); or (B) after consulting with the parties’ attorneys and any unrepresented parties at a scheduling conference.” Fed. R. Civ. P. 16(b)(1)-(2). The Parties can continue their meet and confer after Plaintiffs file their Consolidated Complaint to refine the scope of discovery, if necessary, as Defendants suggest below.

Defendants’ Position:

Defendants maintain that a Rule 26(f) conference that is not tethered to a filed consolidated complaint setting forth the claims and issues will prevent a meaningful discussion as to the scope of discovery. The early Rule 26(f) conference Plaintiffs propose will be inefficient and will need to be revisited in only a few weeks—after Plaintiffs’ consolidated and amended claims are made clear in the forthcoming master complaint and Defendants are able to appropriately investigate.

3. *Deadline for production of agreed upon other preliminary discovery*

Plaintiffs’ Position:

Scope: In addition to the Agreed Upon Materials, Plaintiffs seek (1) all documents and information previously produced by any Defendant in NHTSA investigation (PE15-027 and EA16-003) that may be relevant to claims and defenses in this case; and (2) information on Defendants’ corporate structure.

Regarding the NHTSA documents, the data and documents Defendants already collected and produced to NHTSA are highly relevant to Plaintiffs' claims, and there is limited if any burden for Defendants to provide the same materials to Plaintiffs. Plaintiffs disagree that doing so would require Defendants to re-review this already-reviewed material and cull out purportedly irrelevant information. Defendants' productions and Plaintiffs' use thereof will be governed by a Protective Order to be entered, and the disclosure of irrelevant information, if any, will not prejudice Defendants or be useful to Plaintiffs, but the attendant delay in production will undoubtedly impact Plaintiffs, including because, under Defendants' proposal, Plaintiffs will not have access to the documents prior to filing their Consolidated Complaint. Finally, to the extent any Defendant has produced information to NHTSA in response to other correspondence, Plaintiffs note their position that any such documents would be responsive, including, but not limited to, any information requests or the NHTSA ARC Inflator Task Force.

Regarding information on Defendants' corporate structure, Plaintiffs' proposal is consistent with Section 5(c) of the January 27, 2023 Practice and Procedure Order (ECF No. 4) ("This order does not [] preclude voluntary informal discovery as to the identification and location of relevant documents and witnesses"). This discovery will allow Plaintiffs to name the appropriate Defendants

in the Consolidated Complaint due on May 15, 2023. This discovery will also establish key foundational information to streamline the full merits discovery efforts after the resolution of Defendants' pleading challenges.

Obtaining information on Defendants' corporate structure through Defendants' Initial Disclosures, which will be served 14 days after the Consolidated Complaint, will not be helpful for the purposes of naming the appropriate Defendants in the Consolidated Complaint.

Defendants' Position:

Scope: The general rule in this Court is that discovery should commence thirty days after an answer is filed. (*See* N.D. Ga. L.R. 26.2(A).) Notwithstanding this general rule, the participating Defendants (see fn 1) are in good faith agreeing to produce Information Request responses and attachments to EA16-003 that are relevant to the claims and defenses to this case (defined as the "Agreed Upon Materials" above) before any Motion to Dismiss is decided. As previously explained to Plaintiffs' counsel and the Court at the March 2, 2023 conference, the additional information provided to NHTSA will take substantial time to review because it may include materials that are not relevant to the claims or defenses in this case (e.g., the materials may relate to parts that are not at issue in this litigation). If the scope of what is "agreed upon" becomes an issue, Defendants request the opportunity to

submit letter briefs to address the appropriateness of that discovery under the Rules and the claims here. This submission is not the forum nor the appropriate time for a battle over the scope of this type of discovery.²

Regarding sources of discoverable information and corporate structure, Plaintiffs have not clarified the scope of the discovery sought or why that discovery will not be covered by the Rule 26 disclosures. This is also true of the other justification Plaintiffs raise in this filing (that they need discovery to determine who to sue.) Indeed, the Rule 26 disclosures will contain “a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment.” (FRCP 26(a)(1)(A)(ii).) Beyond this, Defendants object to Plaintiffs’ request.

Deadlines: Even if Defendants agreed to the Plaintiffs’ proposed scope of discovery, Defendants cannot produce the documents on the timeline Plaintiffs now demand. Obtaining the documents from electronic storage, reviewing it, and producing it will take considerable time and effort, and each participating Defendant

² Defendants reserve the right to seek preliminary discovery from Plaintiffs as well as part of the informal process. This may include, without limitation, vehicle identification numbers and purchase agreements pertaining to Plaintiffs’ vehicles.

faces its own systems and storage processes to work through in gathering those prior responses. Manual review of the materials is also necessary because the NHTSA requests and productions are far beyond the scope of products in this case, including inflators with different designs and those not sold in the US. That is why Defendants have proposed a scope and deadline on an expedited time frame, that is more reasonable.

4. Deadline for any Defendant(s) to disclose intent to raise jurisdictional defenses and the general nature of those defenses

Plaintiffs' Position:

The Court ordered the parties to present deadlines for meet-confer related to “other preliminary discovery” (ECF No. 51 at p. 1), which appropriately includes the jurisdictional discovery included in Plaintiffs’ statement on the joint discovery schedule. ECF No. 35 at p. 5. A deadline for disclosure of intent to raise jurisdictional defenses *before* the deadline for motions on jurisdictional defenses is important because it will allow Plaintiffs to serve jurisdictional discovery requests on Defendants claiming such defenses as soon as possible. Plaintiffs only have 60 days to respond to Defendants’ motion(s) to dismiss for lack of jurisdiction. *See* Case Management Order at 2 (ECF No. 51). This is a very limited amount of time to serve, negotiate, obtain, and review jurisdictional discovery in addition to respond to said

motions—particularly if Defendants argue that they are required to search for, collect, and review documents for relevance and privilege.

Defendants' Position:

Setting a deadline for disclosure of jurisdictional defenses was not a subject that the Court ordered the parties to disclose at this time. (ECF No. 51, p. 1.) Plaintiffs did not raise this issue on the meet and confer of the parties, and instead raise it here for the first time in a draft statement minutes before the filing is due to be filed with the Court. Moreover, Plaintiffs are attempting to use this joint submission to alter deadlines previously set by the Court. The deadline for motions on jurisdictional defenses has already been set in ECF No. 51, p. 1: sixty days after filing of Consolidated Complaint. The Court ordered this submission to address only: “Deadlines for Rule 26(f) Conference, Initial Disclosures, and other preliminary discovery.” (ECF No. 51, p. 1). Defendants respectfully state that due to the lack of conferral on this issue, and the meaningful opportunity to state a consolidated position in this filing, this issue is not yet ripe for disposition.

Dated: April 5, 2023

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